

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

THOMAS J. VANKEIRSBILCK

Claimant

VS.

HANOVER DEVELOPMENT CO.

Respondent

AND

MARYLAND INSURANCE CO.

Insurance Carrier

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Docket No. 228,915

ORDER

The respondent and its insurance carrier appealed the preliminary hearing Order dated May 12, 1998, entered by Administrative Law Judge Julie A. N. Sample.

ISSUES

The Administrative Law Judge granted the request for benefits after finding that claimant's accident arose out of and in the course of his employment with respondent. The respondent and its insurance carrier appeal that finding.

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds as follows:

- (1) The respondent, Hanover Development Co. (Hanover), is a residential real estate developer. It is a partnership comprised of several corporations.
- (2) The claimant, Thomas J. VanKeirsbilck, is one of two individuals that manages Hanover's day-to-day operations. When Hanover purchases a property, Mr. VanKeirsbilck works with the engineers and subcontractors to lay out the streets, sewers, and utilities.
- (3) On October 28, 1997, Mr. VanKeirsbilck was injured while helping to clear land in Shawnee, Kansas. The accident occurred when a tree fell from a track loader and struck

Mr. VanKeirsbilck causing 3 fractured vertebrae, 13 rib fractures, a punctured lung, and a fractured scapula.

(4) At the time of the accident, Tom Van, Inc., a corporation owned and controlled by Mr. VanKeirsbilck, owned the land that he was clearing. Mr. VanKeirsbilck testified he intended to offer part of that land to Hanover sometime in the future:

Q. Was Hanover going to develop that piece of land to prepare it for something?

A. We really hadn't discussed that yet. I bought it thinking it was good. Then if Hanover wanted a part of it, I was going to, you know, then ask them if they wanted some of it. Then, of course, the accident happened, and for four weeks I was in ICU, and then another week in the hospital, and so no, I haven't consulted them about it.

(5) The track loader that was being used when the accident occurred was owned and operated by a subcontractor that Hanover regularly used. Hanover paid the subcontractor for its work but received reimbursement from Mr. VanKeirsbilck as he agreed to forego two months of salary.

CONCLUSIONS OF LAW

The preliminary hearing Order should be reversed.

The Appeals Board finds that Mr. VanKeirsbilck has failed to prove it is more probably true than not that the October 1997 accident arose out of and in the course of his employment with Hanover. The accident occurred on land owned by Mr. VanKeirsbilck's corporation and in which Hanover had no interest. At the time of the accident, Mr. VanKeirsbilck had not offered to sell an interest in the land to Hanover or even discussed such a transaction with the Hanover partners. Whether Hanover will someday obtain an interest in the property or develop it is speculation.

Based upon the evidence presented, the Appeals Board concludes Mr. VanKeirsbilck was performing work for Tom Van, Inc., at the time of the accident rather than for Hanover. Therefore, the request for benefits from Hanover and its insurance carrier should be denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated May 12, 1998, entered by Administrative Law Judge Julie A. N. Sample should be, and hereby is, reversed; that the request for benefits is denied.

IT IS SO ORDERED.

Dated this ____ day of June 1998.

BOARD MEMBER

c: James M. Sheeley, Kansas City, KS
Denise E. Tomasic, Kansas City, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director